United Nations S/PV.7636

Security Council

Seventy-first year

Provisional

7636th meeting

Monday, 29 February 2016, 3 p.m.
New York

President:	Mr. Ramírez Carreño	(Venezuela (Bolivarian Republic of))
Members:	Angola	Mr. Lucas
	China	Mr. Li Yongsheng
	Egypt	Mr. Mahmoud
	France	Mr. Lamek
	Japan	Mr. Okamura
	Malaysia	Mr. Ibrahim
	New Zealand	Mrs. Schwalger
	Russian Federation	Mr. Churkin
	Senegal	Mr. Ciss
	Spain	Mr. Gasso Matoses
	Ukraine	Mr. Vitrenko
	United Kingdom of Great Britain and Northern Ireland	Mr. Hickey
	United States of America	Mr. Pressman
	Uruguay	Mr. Rosselli

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

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16-05410 (E)

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The meeting was called to order at 3.05 p.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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The President (*spoke in Spanish*): The Security Council will now begin its consideration of the item on its agenda.

Members of the Council have before them document S/2016/195, which contains the text of a draft resolution submitted by Uruguay.

I shall now give the floor to those members of the Council who wish to make statements before the voting.

Mr. Aboulatta (Egypt) (*spoke in Arabic*): I should like to begin by thanking and commending Judge Hassan Jallow of the brotherly country of the Gambia for the important role he has played in his capacity as Prosecutor of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda.

I congratulate Mr. Serge Brammertz, the current Prosecutor of the International Tribunal for the Former Yugoslavia, on his appointment as Prosecutor of the International Residual Mechanism for Criminal Tribunals, and I wish him the greatest of success.

In that regard, the delegation of Egypt will abstain in the voting on the draft resolution before the Council as a reflection of the consensus reached among the three African States members of the Security Council. We do not object to the person of Mr. Brammertz. Rather, our decision is based on the following two reasons.

First, it is unsatisfactory and unacceptable to set aside the former Prosecutor of the Residual Mechanism, Mr. Jallow, who was not nominated by the Secretary-General to retain his position. Our objection is based on the fact that Mr. Jallow is the only Tribunal official from a country that is not a member of the Group of Western European and other States, which represents a failure to observe the principle of equitable geographical distribution set forth in the Charter of the United Nations and the statute of the Residual Mechanism.

Secondly, the arguments offered by the Secretariat for not nominating Mr. Jallow are inconsistent. They include the desire of the Secretariat to ensure the effectiveness of the Residual Mechanism by appointing Mr. Brammertz to continue work on the cases currently before him as Prosecutor of the International Tribunal for the Former Yugoslavia. Indeed, according to information in the possession of the African Group, Mr. Brammertz has not yet begun his work as Prosecutor of the ICTY on the cases to be submitted to the Residual Mechanism. Mr. Jallow and his colleagues have the expertise necessary to pursue the mission they have successfully carried out since 2012, including on the cases to be submitted to them as members of the Mechanism.

Similarly, we cannot accept Mr. Brammertz's appointment as a function of cost-cutting because he would be covering both roles. Indeed, this is in no way a convincing argument. The criteria in this case are based on clear principles that should be respected in this regard. The principle of double-hatting applied by the Secretariat to Mr. Jallow was not applied when the Secretary-General reappointed the American President of the Residual Mechanism. This raises questions concerning the apparent application of a double standard in this case.

The second reason for our abstention today is our reservation concerning the Secretariat's behaviour in this instance, in particular its unjustified delay in submitting the nomination of the Prosecutor until late February, which raises a number of questions. We fully support the contents of the latter sent by members of the Group of African States to the President of the Security Council on this issue.

Mr. Ciss (Senegal) (*spoke in French*): Senegal thanks the delegation of Uruguay, which submitted the draft resolution before the Council. I make the following remarks in my national capacity.

The delegation of Senegal notes with concern the latter of 23 February 2016, in which the Secretary-

General proposes that Mr. Serge Brammertz of Belgium be appointed Prosecutor of the International Residual Mechanism for Criminal Tribunals, replacing Mr. Hassan Bubacar Jallow of the Gambia, who had been Prosecutor of the Mechanism since 2012. Bearing in mind also the Secretary-General's intention to reappoint Judge Theodor Meron as President of the Residual Mechanism and Mr. John Hocking of Australia, who has been Registrar of the International Tribunal for the Former Yugoslavia (ICTY) since 15 May 2009 and of the Mechanism since January 2012, Senegal asked for a briefing by the Secretariat as to the reasons for the failure to reappoint Mr. Jallow as Prosecutor, representing the de facto exclusion of Africa from the leadership of the Mechanism. It is particularly regrettable to note that this exclusion contravenes the principle of the equitable geographical distribution enshrined in article 10 of the statute of the Mechanism, which provides that the Council shall take due account of the "adequate representation of the principal legal systems of the world" in its appointments.

The argument on behalf of continuity, raised during the course of the briefing, was fare from relevant, given the fact that Mr. Brammertz had not initiated most of the ongoing cases before the ICTY. Indeed, other Prosecutors before him had been replaced in the course of proceedings. On the contrary, the need to ensure the continuity and stability of the management of the Mechanism would speak in favour of the reappointment of Prosecutor Jallow, who led the Tribunal competently, responsibly, rigourously and effectively for four years, as was acknowledged by the Secretariat at the briefing. Moreover, aware that there was nothing in the foregoing arguments to prevent his reappointment to his functions, Prosecutor Jallow had already established teams to work on the cases to be submitted in appeal to the ICTY. In establishing these teams, he relied principally on staff of both the ICTY and the International Criminal Tribunal for Rwanda (ICTR) to manage the appeals, as they had done in previous cases. It is also important to note that the ICTR still has before it the case of three fugitives who will be tried by the Mechanism once they have been arrested. The Mechanism has already begun preparations for the trial of those fugitives.

More critically, the appointment of Mr. Brammertz as Prosecutor of the Mechanism cannot be justified on the basis of the cost savings mentioned, because the President of the Mechanism is in the same situation as Prosecutor Jallow, and it is of the highest importance that the same principle be applied to both of them in order to avoid a double standard.

Africa has always been at the forefront of the fight against impunity, in particular with regard to the establishment of the ICTY and the ICTR. As such, given the recognition of Mr. Jallow's attributes — his high moral character, impartiality and integrity, as well as the need for Africa to be represented in the Mechanism — Senegal decided to abstain in the voting on the draft resolution. However, we would like to stress that our support for the Mechanism remains unwavering. Moreover, I would like to note that this matter was the subject of a letter addressed by the Chair of the Group of African States to the President of the Security Council.

Mr. Lucas (Angola): At the outset, we would like to say that we endorse the statements made by the representatives of Egypt and Senegal, and that we will uphold African solidarity in this matter. Angola will therefore abstain in the voting on the draft resolution on the appointment of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, for the following reasons.

We acknowledge that Prosecutor Serge Brammertz is a professional with the highest level of competence and experience in the conduct of investigations and the prosecution of criminal cases. However, we also acknowledge that Prosecutor Hassan Jallow is an eminent jurist with the highest level of competence and experience. He has performed remarkably as Prosecutor of the International Residual Mechanism for Criminal Tribunals and should be subject to the same treatment as that of his colleagues President Judge Theodor Meron and Registrar John Hocking, whose terms were renewed.

We noted with concern that the International Residual Mechanism for Criminal Tribunals will be exclusively led by principals from Western Europe and other countries. We believe that the critical principle of equitable geographical representation was not taken into account, since the term of the only African principal of the Mechanism was not renewed. Furthermore, the International Residual Mechanism for Criminal Tribunals is an institution for both the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) with two branches, one in Africa and the other in Europe. The fact that there are no more fugitives under

the ICTR jurisdiction and that the Tribunal was closed should not prevent the appointment of a principal from the ICTR. Taking into consideration that the essence of the Residual Mechanism is to bring together the experience of both international tribunals, the Mechanism should have a more balanced composition and not be restricted to the principals from the ICTY.

The President (*spoke in Spanish*): The Council is ready to proceed to the vote on the draft resolution before it. I shall put the draft resolution to the vote now.

A vote was taken by show of hands.

In favour:

China, France, Japan, Malaysia, New Zealand, Spain, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela (Bolivarian Republic of)

Abstaining:

Angola, Egypt, Russian Federation, Senegal

The President: There were 11 votes in favour, none against and 4 abstentions . The draft resolution has been adopted as resolution 2269 (2016).

I shall now give the floor to those members of the Council who wish to make statements following the voting.

Mr. Churkin (Russian Federation) (*spoke in Russian*): The Russian delegation abstained in the voting on resolution 2269 (2016). While we did not block the proposal of the Secretary-General with regard to the appointments to the post of President and Prosecutor of the International Residual Mechanism for Criminal Tribunals, our delegation does not support that proposal and would like to express its very serious concerns about the chosen candidates.

As we see it, given the positions occupied by the proposed candidates in recent years in the International Criminal Tribunal on Former Yugoslavia (ICTY), these appointments could lead to the reproduction and continuation in the Mechanism of the significant flaws that were characteristic of the ICTY. As is well known, we have had many issues with the ICTY in its over 20 years of existence. One of the most important reasons for concern is the issue of the administration of justice, which has become a daily issue for the ICTY. The length of proceedings in certain trials was extended on various pretexts, often going beyond what could be considered reasonable. An example is the case of Vojislav Šešelj, who spent more than 10 years in detention awaiting his sentence. It is incomprehensible how such galling excess can go hand in hand with the presumption of innocence or the basic guarantees of the rights of respondents, which the ICTY has always proclaimed.

The attempts of the Security Council to influence the situation have not been successful. In particular, the Council has called on the Tribunal more than once to reduce the length of time for the completion of cases. The Tribunal, however, has managed to avoid following the instructions of the Security Council, and has shown impressive creativity in finding pretexts to justify the delays. The conclusion strategy for its work within the framework, established by the Council at the proposal of the ICTY itself, was constantly sabotaged. One example is resolution 1966 (2010), according to which the closing of the ICTY should have occurred by 31 December 2014. The Tribunal did not meet that deadline either. Furthermore, the delays in administering justice were not reduced in spite of the appeal contained in resolution 2193 (2014); the delays in fact increased. We hope that the new President of the ICTY, Judge Carmel Agius, will take the necessary steps to improve the current situation.

We are very concerned by reports of the death in February of Zdravko Tolimir in a prison in The Hague. According to his defence lawyers, in 2015 he applied to travel to Serbia for medical care; however, his request was refused. This is not the first such death. For obvious reasons, such events cause serious concerns about due process for respondents and those convicted by the ICTY, and with regard to such fundamental rights as the right to life and the right to health. Measures to improve this situation are necessary. It is important that the Office of Internal Oversight Services investigate the work of the ICTY medical unit. We expect corresponding proposals or instructions from the Secretary-General.

It is important to separate the failures of the ICTY from the work of its leadership. We would certainly not like to see the Mechanism inherit the problems of the ICTY, which unfortunately has not proven itself to be an impartial body of international justice. Based on everything I have just said, we abstained in the voting on today's resolution because we would not like to bear responsibility for the consequences of the proposed appointments.

Mr. Li Yongsheng (China) (*spoke in Chinese*): With regard to the affairs of the international tribunals, including the question of the International Residual Mechanism for Criminal Tribunals, China has always been objective and fair, and has avoided involving its self-interest.

Based on our support for the decision of the Secretary-General, our expectations of fairness and high efficiency in the functions of the Residual Mechanism and its principals in accordance with the law, considerations with regard to the continuity of the Tribunals and the need for the Security Council to complete the appointment of the Prosecutor in a timely manner, China voted in favour of the resolution.

At the same time, China takes note of the concerns of several countries with regard to the appointment of the President of the Residual Mechanism and the nomination of the Prosecutor. We hope that those concerns will be duly considered and that the appointment and nomination of the principals of the Residual Mechanism will be more fair and transparent in future. China also hopes that the Residual Mechanism and its principals will strictly implement the relevant Security Council resolutions and execute their functions in a fair and efficient manner, so as to earn the confidence of the international community.

The meeting rose at 3.30 p.m.